

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-1966

CARL G. ELY; GILDA ELY, Administrators of the
Estate of Carl G. Ely, Jr., deceased,

Plaintiffs - Appellants,

versus

FORTIER LOSS CONTROL CONSULTANTS,
INCORPORATED,

Defendant - Appellee.

Appeal from the United States District Court for the Western
District of Virginia, at Big Stone Gap. Glen M. Williams, Senior
District Judge. (CA-02-25-2)

Submitted: January 29, 2003

Decided: March 12, 2003

Before WIDENER and NIEMEYER, Circuit Judges, and HAMILTON, Senior
Circuit Judge.

Affirmed by unpublished per curiam opinion.

Carl E. McAfee, MCAFEE LAW FIRM, P.C., Norton, Virginia, for
Appellants. Donald W. Huffman, HUFFMAN & NIXON, P.C., Roanoke,
Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Carl G. Ely and Gilda Ely appeal the district court's order granting Fortier Loss Control Consultants' motion to dismiss their wrongful death action. We have reviewed the record and find no reversible error. We note that the facts relied on by the district court in reaching its conclusion were contained in the complaint. Based on those facts, it is clear that Plaintiffs' decedent was contributorily negligent, and his negligence was the proximate cause of his fatal accident. Accordingly, we affirm on the reasoning of the district court. See Ely v. Fortier Loss Control Consultants, Inc., No. CA-02-25-2 (W.D. Va. Aug. 2, 2002). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED